

**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Commission Minutes

**Clarion Hotel
320 Hillsborough Street
Raleigh, NC 27603**

Thursday, February 24, 2011

Attending:

John R. Corne, Dr. John S. Carbone, Debra Dihoff, Dr. Thomas Gettelman, Dr. Ranota T. Hall, Dr. John J. Haggerty, Matthew Harbin, A. Joseph Kaiser, Emily Moore, Nancy Moore, Phillip A. Mooring, John Owen, Pamela Poteat, Elizabeth Ramos, Jerry Ratley, Don Trobaugh, David R. Turpin, Dr. James W. Finch, Dr. Ranota T. Hall, Beverly Morrow

Excused Members:

Dr. Greg Olley, Dr. Diana Antonacci, Jennifer Brobst, Dr. Richard Brunstetter, Cindy Ehlers

Other Absences:

Norman Carter, Carl Higginbotham

Division Staff:

Steven Jordan, Jim Jarrard, Steven Hairston, W. Denise Baker, Marta T. Hester, Andrea Borden, J. Luckey Welsh, Beth Melcher, Amanda J. Reeder, Dr. Ureh Lekwauwa, Dr. Susan Saik, Laura White, Jim Osberg, Helen Wolstenholme

Others:

Jim D. Martin, Sally Herndon, John F. Holter, Gary Leonard, Joyce Swetlick, Louise Fisher, Theresa Edmondson, Betty Gardner

Handouts:

1. Tobacco Free Pilot Programs in State Hospitals (power point presentation)
2. Executive Summary – Report to the Commission for MH/DD/SAS on the Pilot to Establish a Tobacco Free Environment in State Operated Healthcare Facilities: Broughton Hospital and Walter B. Jones ADATC
3. Rule 10A NCAC .0201 – State Facility Environment
4. N.C.G.S. §130A-493 – Smoking Prohibited in State Government Buildings and State Vehicles
5. DMH/DD/SAS – Internal Waiver Process
6. Rule 10A NCAC 27G. 0304 – Facility Design and Equipment

Call to Order:

John R. Corne, Chairman, NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (Commission) called the meeting to order at 9:35 a.m. He asked for a moment of reflection, and welcomed everyone to the meeting. Chairman Corne reviewed the ethics reminder and reminded the members about the ethics training requirements. He also reminded the Commission members that they are required by Executive Order 34 to attend 75 percent of the regularly scheduled Commission meetings each year.

Approval of Minutes

Upon motion, second and unanimous vote, the Commission approved the minutes of the November 18, 2010 meeting.

Chairman Corne announced that Larry Pittman had resigned from the Commission and asked that any member who might be interested in serving as the Advisory Committee Chairperson notify him of this interest via email.

Division Director's Report: Division of Mental Health, Developmental Disabilities and Substance Abuse Services

Steven Jordan, Director, NC DMH/DD/SAS, gave a brief report on the release of the Governor's budget and its impact on mh/dd/sa services. Mr. Jordan stated that the Governor's budget contains a five million dollar reduction in the administrative fee for Local Management Entities (LMEs) and a 75 million dollar one-time infusion into the Mental Health Trust Fund. Mr. Jordan stated that from a legislative stand point one of the things the Division is hoping to do this year is receive approval for the expansion of the 1915 (b)(c) Waiver, beyond the three current sites (PBH, Mecklenburg and Western Highlands Network).

Mr. Jordan also reported on the status of Critical Access Behavioral Health Agencies (CABHA): on January 1, 2010, 180 agencies had been certified as CABHAs and there are now 192 CABHAs state-wide. Mr. Jordan also stated that the Division has provided outreach to assist consumers in those areas where the agencies opted not to apply for CABHA certification. He reported that from a stability standpoint the children and substance abuse continuum all seem to be going well. The one area that the Division is dealing with is the adult mental health continuum; the issues there seem to be centered around the Community Support Team (CST) service.

Mr. Jordan responded as indicated to the following questions from the Commission:

- Beverly Morrow, Commission member, asked if the reduction in hours for CST (from 15 to 5 hours) was being addressed. Mr. Jordan stated that the Division was looking at flexibility within the service to address some concerns associated with that issue.
- Dr. Thomas Gettelman, Commission member, asked if one impact of CAHBA would be to reduce the number of CST providers. Mr. Jordan responded that the number of CST provider would be reduced under CABHA.

Division Director's Report: Division of State Operated Healthcare Facilities

J. Luckey Welsh, Director, NC Division of State Operated Healthcare Facilities (DSOHF) stated that Broughton Hospital achieved Joint Commission Accreditation and received an excellent survey. Mr. Welsh further stated that the Walter B. Jones Alcohol and Drug Abuse Treatment Center (ADATC) also achieved Joint Commission Accreditation for the first time in many years. Mr. Welsh stated that at the last Commission meeting, Laura White, Team Leader for Hospitals, presented information regarding delays of care in hospital emergency departments.

Beth Melcher, Assistant Secretary for MH/DD/SAS, introduced the new medical director at the NC DMH/DD/SAS, Dr. Ureh Lekwauwa, and delivered a presentation on the legislative report on the *Provisions of Behavioral Health Crisis Services by Hospital Emergency Departments*. According to Dr. Melcher, the report findings indicate that 4.2 million individuals were seen in local emergency departments (EDs) during the State Fiscal Year 2009-2010. Of that total, 3.2 percent were individuals who had a primary diagnosis of a mental health, developmental disability or substance abuse disorder and were seen in the Emergency Department (ED) for a

behavioral health crisis. The report findings indicated that the average length of stay of individuals presenting to the ED with a behavioral health crisis was 9 hours and 38 minutes. Dr. Lekwauwa added that she is working with a stakeholder group to address the number of patients in EDs and the amount of wait time. The stakeholder group will begin meeting in March and plans to produce five recommendations to address these core issues within a six month timeframe.

Dr. Melcher and Dr. Lekwauwa responded to the following questions:

- Don Trobaugh, Commission member, reported on a call from Cape Fear Hospital regarding a patient being handcuffed to the bed for 15 days and asked if there really are patients left handcuffed to the bed for that length of time. Dr. Melcher stated that the handcuffs seemed to be a little excessive, but if they are on involuntary commitment status they probably do have to wear handcuffs. Dr. Melcher discussed the protocol and the Division's need to examine strategies of how that communication needs to be occurring in a more effective way. Jim Jarrard, Deputy Director, NC DMH/DD/SAS, stated that the Division is currently investigating this particular episode. Mr. Jarrard acknowledged that protocol is not always followed by the hospitals. He added, however, that the individual in question has reportedly been placed and is now in an appropriate setting.

Mr. Welsh received the following questions from the Commission:

- Dr. James Finch, Commission member, stated that he was having a hard time reconciling the three percent of the emergency rooms visits being related to mental health and substance abuse given that most surveys would indicate that the number should probably be 40 – 50 percent. Dr. Melcher responded that no database is perfect; the goal is to determine how to get the best data that will provide answers necessary to address the concerns noted. Dr. Melcher further clarified that the data presented was specifically for individuals who showed up in the emergency department saying that they had a behavioral health crisis. Dr. Melcher stated that they were probably missing some people with this data.
- Debra Dihoff, Commission member, stated that she felt it has to be somebody's job to be responsible for emergency room wait time and one of the issues at this time is that it is a divided responsibility. Ms. Dihoff recommended that this become a performance data requirement under the LME performance report.
- Emily Moore, Commission member, stated that the patient review process is given to board members of Cherry Hospital in a format that shows who has been waiting, how many hours, and the status of that individual. Mr. Welsh responded that at the Walter B. Jones ADATC they have developed an electronic bed board for the east. Every emergency room would put in available beds in the community hospitals, so that when an emergency room has a patient that needs to be placed they will know where there are available beds. Mr. Welsh stated that this may need to be the prototype statewide.
- Mr. A. Joseph Kaiser, Commission member, asked if the stakeholder group discussed by Dr. Lekwauwa included peer support representatives. Dr. Lekwauwa responded that they did not but added she felt it was a good idea.

Advisory Committee Report

In Mr. Pittman's absence, W. Denise Baker, Team Leader, Division Affairs Team, NC DMH/DD/SAS, gave the January 27, 2011 Advisory Committee Report. Ms. Baker stated that Dr. Greg Olley chaired the committee meeting in Mr. Pittman's stead. Ms. Baker further stated that Dr. Olley provided guidance for carrying out their work within the subcommittee and briefly reviewed the timeline guide. The three priority areas remain as follows: 1) Community Support Services with an emphasis on CABHA (Critical Access Behavioral Health Agencies); 2) Workforce Development; and 3) Veterans Access to Mental Health, Developmental Disabilities and Substance Abuse Services with a focus on Traumatic Brain Injury (TBI). Ms. Baker stated that the members spent the majority of the committee meeting in their subcommittee assignments and then they provided brief updates upon their return.

Rules Committee Report

Jerry Ratley, Chairman, Rules Committee, stated that, during the meeting held January 27, 2011, the committee considered and approved the following rules for review by the full Commission: 1) Rule 10A NCAC 27G .0813 – Waiver of Licensure Rules; 2) Rule 10A NCAC 27G .0105 – General Definitions; and 3) 10A NCAC 26D – Prison Rules.

Mr. Ratley reminded the Commission that the prison rules have been before the Commission a number of times before. Mr. Ratley stated that the Commission had adopted the recommendation to forward changes to the Department of Correction (DOC) for review and response by the DOC Secretary. The DOC response was reviewed by the Rules Committee and the rules before the Commission are the recommended changes and clarification to the rules in response to the DOC feedback.

Report on the Pilot to Establish a Tobacco Free Environment in State Operated Healthcare Facilities: Broughton Hospital & Walter B. Jones ADATC (Proposed Amendment of Rule 10A NCAC 28C .0201 – State Facility Environment)

Dr. Susan Saik, Clinical Policy, NC DMH/DD/SAS, gave the presentation on the *Pilot to Establish a Tobacco Free Environment in State Operated Healthcare Facilities*. On July 9, 2008, the Rules Committee considered a request to amend Rule 10A NCAC 28C .0201 – State Facility Environment. The proposed amendment would eliminate the requirement for State Operated Healthcare Facilities to provide areas accessible to clients who wish to smoke tobacco. In order to obtain more information on the effect of a tobacco free campus in state operated facilities, the Rules Committee approved a pilot program so that the Committee would have more information before making a final decision on the proposed amendment; the Committee recommended approval of that pilot study by the Commission.

On August 21, 2008, the Commission approved a pilot study to establish a tobacco free environment. In 2009, a plan to implement a tobacco free environment at Broughton Hospital was submitted and approved by the Commission. On August 20, 2009, the Commission also approved a pilot to establish a tobacco free environment at Walter B. Jones ADATC. Dr. Saik's presentation was based on the findings and outcome from both pilot programs.

Laura White, Team Leader, NC State Operated Healthcare Facilities, presented Rule 10A NCAC 28C .0201 – State Facility Environment to the Commission with a request to amend the language and remove the text that provides smoking areas. Ms. White stated that the rule would still provide for the consumer a quiet place for sleep and privacy.

The Commission members asked the following questions in response to the presentation:

- Matthew Harbin, Commission member, asked about the statutory authority for the rule and whether there was specific statutory authority for the amendment. Amanda Reeder, Rulemaking Coordinator, NC DMH/DD/SAS, responded that the Commission had statutory authority for the subject matter.
- Dr. Finch stated that he was puzzled about the phrase smoking as opposed to tobacco use and wanted to know the percentage of smokers versus smoke-less users. Ms. White stated the rule specifically addresses providing a smoking area and if the Division is no longer required to provide a smoking area then the facilities would be governed by the policies that they put in place and the goal would be to maintain consistency with healthcare standards, which is tobacco free.
- John Owen, Commission member, stated that the right of patients to get outside a couple of times a day needs to be preserved. Mr. Owen further stated that people need to be aware that the smoking privilege allowed patients to get outside on a daily basis. Ms. White responded that they would not limit out door activity simply because smoking breaks were now eliminated.

Upon motion, second, and unanimous vote, the Commission approved the amendment of Rule 10A NCAC 28C. 0201 – State Facility Environment for publication.

Proposed Amendment of Rule 10A NCAC 27G .0813 – Waiver of Licensure Rules

Stephanie Alexander, Chief, Mental Health Licensure Section, NC Division of Health Service Regulation (DHSR), gave the presentation on the proposed amendment of Rule 10A NCAC 27G .0813 – Waiver of Licensure Rules. Ms. Alexander stated that DHSR is proposing a revision to the waiver rule to allow for the following: 1) make clear in this specific rule that DHSR can consider requests for renewal of waivers prior to the actual issuance of the license, pending that license being issued for the calendar year; and 2) waivers related to physical building design and equipment will stay in effect for a period not to exceed 10 years. The Commission has rulemaking authority for the subject matter and the rule is being presented for approval to publish in the N.C. Register.

The Rules Committee, at the January 27th meeting, asked that staff check with the Rules Review Commission (RRC) to see if the recommended language of the waiver period *not to exceed 10 years* was appropriate. Staff informed the Commission that the staff attorney for the RRC advised that the current language would require that the factors to be used in determining whether the waiver would be effective for 10 years or less be set forth in the rule itself. Staff reported to the Commission that the best way to rephrase the rule would be to state “for a period of 10 years”.

A motion was put forth to approve the rule for publication with the recommended change of language “for a period of 10 years”.

Upon motion, second, and unanimous vote, the Commission approved the amendment with recommended change to Rule 10A NCAC 27G. 0813 – Waiver of Licensure Rules for publication.

Proposed Adoption of 10A NCAC 27G .0105 – General Definitions

Ms. Alexander also presented Rule 10A NCAC 27G .0105 – General Definitions. Ms. Alexander stated that the Secretary of Department of Health and Human Services had given DHSR the responsibility of licensing facilities. N.C.G.S. §122C-23 sets forth several situations in which a facility is not allowed to be issued a license, including when the owner, principal or affiliate of the facility was in the same capacity with another facility that was issued certain penalties, had its license revoked, and other circumstances. Ms. Alexander further stated that certain terms cited in the statute were not defined, which has made it difficult for DHSR to enforce the statute. The proposed adoption is intended to ensure that DHSR is able to properly enforce the statute when licensing facilities for the mh/dd/sa population. The Commission has rulemaking authority for the subject matter and the rule is being presented for approval to publish in the N.C. Register.

Upon motion, second, and unanimous vote, the Commission approved the adoption of 10A NCAC 27G .0101 – General Definitions for publication.

Proposed Amendment of NC Department of Correction Standards for Mental Health and Mental Retardation – 10A NCAC 26D

Jerry Ratley, Chair, Rules Committee, presented the proposed amendment of NC Department of Correction Standards for Mental Health and Mental Retardation – 10A NCAC 26D. Mr. Ratley reminded the Commission that initially a workgroup was formed to address the rules. The Rules Committee made significant strides over the last year in revising these Rules. Mr. Ratley informed the Commission that in August of 2010 the Commission approved the Rules to be forwarded to DOC for review. The Rules Committee reviewed the DOC response at its January 27th meeting and made revisions based on the DOC feedback. The Rules are being presented to the Commission for approval of publication in the NC Register.

Upon motion, second, and unanimous vote, the Commission approved the amendments of the NC Department of Correction Standards for Mental Health and Mental Retardation – 10A NCAC 26D for publication.

Public Comment Period

There were no public comments.

There being no further business, the meeting adjourned at 1:58 pm.